## United States Senate SPECIAL COMMITTEE ON AGING

## **OPENING STATEMENT OF CHAIRMAN CRAIG**

## Guardianships over the Elderly: Security Provided or Freedoms Denied? February 11, 2003

We are here today to explore the issue of guardianships imposed over the elderly. This committee originally addressed abuses of the guardianship system, in the early 90's, through roundtable discussions that produced a series of recommendations. It is now time to take a close look at how far we have come on this issue of great importance to our nation's seniors.

Guardianships are a judicial intervention allowing for the management of an elderly adult's personal affairs and property. When used correctly in very extreme cases, guardianships can be an important tool in securing the physical and financial safety of an incapacitated elder.

At the same time, guardianship can divest an elderly person of all the rights and freedoms we consider important as citizens. When full guardianship is imposed, the elder no longer has the right to get married, vote in elections, enter into contacts, make medical decisions, manage finances, or buy and sell property. They can't even make decisions on where they want to live. All these rights are taken away from the elder and vested in a surrogate decision maker, the guardian.

Our investigation has confirmed that some guardianships can have onerous affects on the elderly. For example, guardianship may drain the elder's estate, result in protracted legal proceedings, and substitute the judgment of a total stranger for those of the elder and their family. A recent case has come to my attention where a court actually terminated a marriage pursuant to a guardianship.

Since people are now living longer, we can expect a significant increase in the number of vulnerable elders potentially harmed by the guardianship process. In addition, the financial management of a significant amount of wealth is at stake. Studies indicate that Baby Boomers are expected to inherit 10.4 trillion dollars in assets in the next forty years.

I am interested in this issue because our constitution ensures that citizens shall not be deprived of liberty or <u>property</u> without due process of law. Also, substantial sums of federal money including Social Security and SSI payments, disability and survivor benefits, federal pensions, and welfare benefits are administered and potentially misused by guardians.

For this reason, I will be asking the GAO to study the accountability of guardians who are charged with managing these funds on behalf of the elderly.

Ironically, the imposition of guardianship without adequate protections and oversight may actually result in the loss of liberty and property for the very persons these arrangements are intended to protect. In our efforts to provide protections for our seniors, we must be cautious that our well intentioned interventions do not do more harm than good.

We have one such case before us here today.

I would like to welcome Jane Pollack and Michael Kutzin to the committee to tell us what happened to Mollie Orshansky. We will play an interview providing background on this case, and then commence with your testimony, Jane.